



INTERIOR BOARD OF INDIAN APPEALS

Robert Burnette v. Assistant Secretary - Indian Affairs

10 IBIA 464 (11/16/1982)

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Restricting:

9 IBIA 203



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ROBERT BURNETTE,
Appellant

v.

DEPUTY ASSISTANT SECRETARY--
INDIAN AFFAIRS (OPERATIONS),
Appellee

: Docket No. IBIA 82-42-A
:
:
: Order Dismissing Appeal
:
:
:
: November 16, 1982

ORDER

On May 3, 1982, Deputy Assistant Secretary--Indian Affairs (Operations), John W. Fritz, rejected an appeal by Robert Burnette seeking the reinstatement of tribal court Judge Trudell H. Guerue, Jr., and the disapproval of Rosebud Sioux tribal council resolution No. 81-120 dated December 21, 1981, which accomplished the judge's suspension. The decision of May 3, 1982, was based upon the Deputy Assistant Secretary's interpretation of the Rosebud Sioux tribal constitution, a Rosebud Sioux election ordinance and prior Departmental precedent. Not in the record before the Deputy Assistant Secretary at the time of his decision was the fact, now established upon appeal to this Board, that the suspension of the tribal judge was vacated 4 days before the Departmental decision. It appears that the judge has been, for some time, fully restored to office. Based upon this uncontested fact, counsel for appellee, Bureau of Indian Affairs (BIA), moved to dismiss this matter because it had become moot.

Despite the restoration of the tribal judge, however, appellant contends his appeal is not moot. He alleges that the suspension of the judge had resulted in the completion of an election which would otherwise not have been held because of an injunction proposed by the judge. According to appellant, the election of an unqualified tribal council had resulted, which required BIA intervention to correct. Appellant contends this Board has the authority and obligation to review these allegations now stated by appellant for the first time on appeal because the acts complained of are violations of the United States Constitution and laws and also violate the Rosebud Sioux constitution and laws.

Briefs were requested from both parties despite the apparently well taken motion by appellee for dismissal, in order to clarify the record concerning the basis claimed by appellant for continued jurisdiction over this matter by the Board. ^{1/} The submissions by the parties make plain that the matter

^{1/} Although not raised by appellant, the Board was concerned that this appeal, seemingly not meritorious on its face, might be the result of prior Board precedent supplied by the decision in Roger St. Pierre v. Commissioner, 9 IBIA 203, 89 I.D. 132 (1982). St. Pierre contained language which might be misconstrued to support a general investigation into tribal internal affairs by BIA such as was here sought by appellant. This concern prompted the Board

appealed to this Board, in fact, concerned only the question of the legal propriety of the suspension of the tribal judge. The relief sought from the Deputy Assistant Secretary was the reinstatement of the judge. That relief has been obtained. The BIA decision appealed from can, therefore, no longer be considered the basis for any relief claimed by appellant. See 25 CFR 2.1; 43 CFR 4.331. The motion by appellee to dismiss for mootness should be granted. DeFunis v. Odegaard, 416 U.S. 312, 317 (1974). Accordingly, upon consideration of the entire record on appeal, the motion to dismiss is reconsidered by the Board sua sponte and is granted.

This decision is final for the Department.

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Franklin D. Arness
Administrative Judge

//original signed

Wm. Philip Horton
Chief Administrative Judge

//original signed

Jerry Muskrat
Administrative Judge

fn. 1 (continued)

to reconsider whether in announcing the holding in St. Pierre it had announced a policy for the Department in excess of its authority as delegated by the Secretary of the Interior at 43 CFR 4.1, to decide legal questions involving Indian affairs for the Department. In St. Pierre, the Board found that the Indian Reorganization Act of 1934 establishes a specific trust responsibility on the part of the United States with regard to tribal governments organized in accordance with its provisions. 89 I.D. at 146. This central thesis of St. Pierre, which was predicated on interpretations of the legislative history of the Indian Reorganization Act, had not been previously articulated by a court or this Department. It is now recognized by the Board that the trust proposition set forth in St. Pierre reflects the development of policy. Policymaking is properly reserved to the Assistant Secretary for Indian Affairs. The authority of this Board is limited by regulation to the decision of legal questions for the Department, as was correctly observed in the St. Pierre opinion by the analysis appearing at 89 I.D. 139. The holding in St. Pierre that the IRA bestows a trust responsibility on the Secretary must, therefore, be disapproved as an impermissible policy pronouncement by the Board and will not be followed in this or future Board decisions unless otherwise established as Departmental policy through appropriate means.